**Testimony in Support of**
**Senate Bill 442: An Act Prohibiting Predatory Pricing of Pharmaceuticals**
**Submitted by Ted Lee, Senior Fellow**
**Global Health Justice Practicum**
**March 7, 2017**

My name is Ted Lee. I am a student at Yale Law School, and a senior fellow of the Global Health Justice Practicum, a course run by several Yale faculty who lead the Yale Global Health Justice Partnership. The Global Health Justice Partnership (GHJP) is a collaboration between Yale Law School and the Yale School of Public Health. Our team conducts research on drug pricing and advocates for increased access to medications. Since predatory pricing practices make it more difficult for patients to afford essential medications, I am testifying today in support of SB 442.

**The Problem**

Significant price increases in both generic and brand-name pharmaceuticals are endangering the long-term stability of our health care system, draining state budgets, and hurting patients in Connecticut and around the country. Several other groups, including the Universal Health Care Foundation of Connecticut, are submitting testimony regarding the problem of predatory pricing generally, so I will focus my testimony on how other states are addressing this problem and what Connecticut can do to control predatory pricing practices. Please also see the attachment to this testimony for more information on price increases for commonly used and essential medicines.

**Initiatives in Other States**

Given the challenges of passing federal legislation to address high drug prices, states are in the best position to address the problem of predatory pricing practices. At the request of the Universal Health Care Foundation of Connecticut, we are researching how other states are approaching legislation to limit predatory pricing and price gouging.

Several states are exploring options to control predatory prices. Proposals include: (1) limits on price increases above a certain level; (2) requirements that manufacturers justify price increases; and (3) prices that are tied to specific standards, either reference prices or benchmarks based upon specific criteria.

*Limits on Price Increases*

Last year, New York passed legislation to limit price increases for generic medicines in certain instances. Under that law, generic drugs purchased through the state's Medicaid agency are limited to price increases of 300% or less per year.[i] Violators must pay a rebate to the state Medicaid agency. The law has apparently been quite successful, with few drugs exceeding the established threshold. New York is now considering a proposal that would lower the threshold, limiting price increases to 75%.

*Justifications for Price Increases*

Other proposals require manufacturers to justify substantial price increases. Some of these proposals give the state Attorney General new power to police excessive prices. Under a bill recently taken up by the legislature in Maryland, drug companies would have to disclose information about significant price increases for essential generic drugs and generic drug-device combinations.[ii] Based on the information

submitted, which would include the costs of developing and manufacturing the drug, the Attorney General would determine whether to prosecute the drug company for an unjustified price increase. This law would presumably help deter actions like those recent high-profile price hikes taken recently by Mylan (for the EpiPen) and Turing Pharmaceuticals (for Daraprim). In both cases, these companies dramatically increased prices for old medicines, imposing dramatic new costs for states, insurers, and individuals, such as those with high copays.

*Reference Pricing and Setting Fair Prices*

Other bills would set a reference price and disallow prices above those reference prices. These prices might be determined by national or international standards. A bill proposed in Oregon would require manufacturers to reimburse payers when prices exceed the highest price paid in any other country that is a member of the Organisation for the Economic Co-operation and Development (OECD).[iii] The OECD includes 35 member countries, most of which are high-income and regarded as developed economies. Since the U.S. spends more on prescription drugs per person than any other developed country, this presumably would have the effect of lowering drug prices. A ballot initiative in Ohio would ban state purchases if per-unit drug prices exceed the lowest prices received by the U.S. Department of Veterans Affairs.[iv]

Some states are taking an even broader view of pricing and are proposing to set a fair price benchmark. A New York bill proposed by Governor Cuomo would set a fair price for certain high-cost generic and brand-name drugs based on a benchmark recommended by the state's Drug Utilization Review Board.[v] Manufacturers that price the drug above the benchmark for any payer would be required to pay penalties.

**What Connecticut Should Do**

Connecticut can take meaningful steps to rein in predatory prices.

*Scope of Coverage*

Connecticut should consider a bill that covers generics, brand-name drugs, and drug-device combinations purchased in the state. Because prices are rising across all these categories, a comprehensive bill will be more likely to control predatory pricing.

*Defining Predatory Pricing*

There are many ways to define predatory prices. One method gaining traction would focus on whether the price is justified considering the costs and risks of research, development and production. By linking the cost of innovation and manufacturing to the price of the drug, this approach is both economically grounded and only targets bad actors earning an unfair return on investment.

Companies could make the case to state officials that their price is justified, but at a minimum this law would likely help constrain the extraordinary price increases we have seen in recent years. A recent bipartisan U.S. Senate Committee identifies many of these cases.[vi] These price increases appear to have no basis in either research and development costs or other increased costs for the company.

*Legal Mechanisms*

Because the Attorney General is the state's chief law enforcement officer, the Attorney General's office may be an appropriate actor to prosecute predatory pricing practices. An effective law might require disclosures from drug companies when they raise prices or release drugs at a price above a certain threshold. The Attorney General's office could then review confidential documents from drug companies and based on that information determine whether to pursue a case that the price a company is demanding is unjustified

according to the definition in the statute. Drug companies would also have an incentive to price drugs below the chosen threshold, likely directly bringing prices down with no overhead for the state. A small number of investigations and penalties would also have the effect of constraining the behavior of companies going forward.

**Conclusion**

Legislation prohibiting predatory pricing of prescription drugs is essential and could improve patient access to important drugs. It could also reduce spending by the state, and assist in balancing Connecticut's budget. We therefore urge Connecticut to pass effective legislation to limit predatory pricing.

*The Global Health Justice Partnership (GHJP) is a program hosted jointly by Yale Law School (YLS) and Yale School of Public Health (YSPH) that tackles contemporary problems at the interface of global health, human rights, and social justice. The GHJP is pioneering an innovative, interdisciplinary field of scholarship, teaching, and practice, bringing together diverse thought leaders to collaborate on research, policy projects, and academic exchanges.*

---

[i] New York Social Services Law, art. 5, § 367-a(7)(f)(1).

[ii] Maryland S.B. 415 (2017).

[iii] Oregon H.B. 2387 (2017).

[iv] Ohio Drug Price Standards Initiative (2017). A similar ballot initiative was defeated in California in 2016. Implementing a law that uses V.A. prices as a referent likely would have faced a number of challenges. *See* Theodore T. Lee & Gregory Curfman, "California's Proposition 61: Will Direct Democracy Impact Prescription-Drug Pricing?," *Health Affairs Blog* (Nov. 1, 2016), http://healthaffairs.org/blog/2016/11/01/californias-proposition-61-will-direct-democracy-impact-prescription-drug-pricing/.

[v] New York S. 2007/A. 3007 (2017).

[vi] Senator Susan M. Collins (R-ME) & Senator Claire McCaskill (D-MO), "Sudden Price Spikes in Off-Patent Prescription Drugs: The Monopoly Business Model that Harms Patients, Taxpayers, and the U.S. Health Care System" (2016), *available at* http://www.aging.senate.gov/imo/media/doc/Drug%20Pricing%20Report.pdf.

**Attachment 1**

**The Problem of High and Rapidly Growing Prescription Drug Prices**

- **Pharmaceutical spending in the United States is growing at an unprecedented rate.**
  - Spending on prescription drugs in the United States rose by 13% in 2014[1] and 12% in 2015.[2]
  - These increases are higher than any in the previous decade. In comparison, hospital and physician expenditures grew by 4-5%.[3]
- **The United States spends more on prescription drugs per person than all other developed countries.**
  - Americans spend over $1,100 per person per year on prescription drugs. The next highest country is Canada, which spends $787 per capita.[4]
  - On average, Americans pay 50 to 100% more for drugs than do people in other countries.[5]
  - Specialty drugs are typically priced much higher in the United States than in other developed nations.
    - As an example, the average cost per month for Humira, a drug for inflammatory diseases such as rheumatoid arthritis, was $881 in Switzerland vs. $2,246 in the United States.[6]
- **Price increases, of both generic and brand-name drugs, are driving the growth in spending.**
  - Retail prices for brand-name drugs increased 130 times faster than inflation in 2015.[7]
  - Spending on specialty medicines, to treat conditions such as hepatitis, autoimmune diseases and cancer has nearly doubled in the past five years. Overall, spending on specialty medications increased by 30.9% in 2014 [1] and 21.5% in 2015.[2]
  - Generic medications account for 88% of prescriptions dispensed nationally.[8] From 2010 to 2015, the price of 315 (22%) of generic prescription drugs paid for by Medicare increased more than 100%. Of these drugs, 15% increased by more than 500%.[9]
    - Prices of some generic drugs for common conditions, such as albuterol (first launched to treat asthma in 1969) and doxycycline (an antibiotic approved by the FDA in 1967), increased by 4,000% and 8,000%, respectively, between 2013-2014.[10]
  - Here are some other examples of outrageous price increases:
    - EpiPen: The list price for two EpiPens was $600 in 2016, up from just over $100 in 2007.[11]
    - Insulin: the price of insulin rose 200% between 2002 and 2013 without any change in the formulation of the drug.[12]
    - The price of Naloxone (used to treat opioid overdoses) spiked by nearly 1,000 percent in July 2016.[12]
    - The average annual cost for multiple sclerosis (MS) medications is $78,000 today, nearly 400 percent higher than the $16,000 average in 2004."[13]
- **While prices are rising, drug corporations are reporting record profits.**
  - Generic and major pharmaceutical companies combined achieved a net profit margin of 55% ranking higher than major banks (23%) and investment managers (29%).[14]
  - The pharmaceutical industry is currently one of the world's most profitable industries with profit margins for some companies reaching 42%.[5]
- **Major pharmaceutical corporations spend more on marketing than research.**
  - Drug companies spend an estimated 3 billion on R&D but up to 24 billion on Sales and Marketing. [15]
  - In 2015, only 11 out of 100 pharmaceutical corporations spent more on R&D than Marketing. [16]
- **The public subsidizes drug companies by paying for drugs multiple times: to fund the research, to pay insurance premiums and to purchase the drugs.**
  - From 1988-2005, 49% of all drugs and 65% of priority review drugs received public research funding.[17]
  - 84% of basic science research is supported by government and taxpayers.[18] Drug development by major pharmaceutical companies would not be possible without these breakthroughs.
  - Pharmaceutical companies generally price medication at what the market will bear rather than how much benefit the drug has.[19]

    - The Hepatitis C drug Solvadi retails for $84,500. Generous estimates of R&D investment into this drug by Gilead Sciences are at $870 million, with profits of more than $36 billion.[4]
- **Pharmaceutical prices are creating a crisis for Connecticut residents.**
    - 1 in 4 people in the United States report difficulty affording medications that they need. According to a Kaiser study, about 50% of the population reports taking prescription medications with a quarter of them reporting not filling a prescription due to cost.[20]
    - In 2013, Americans had to pay an estimated 41 billion in out of pocket costs for pharmaceutical drugs.[21] This number has been steadily increasing due to higher deductible plans with increased copays and coinsurance.
    - Consumers live in fear of high and rising prescription drug costs. In a recent Kaiser Family Foundation poll, 63% listed as a top priority, "Government action to lower prescription drug prices".[22]
    - Connecticut is experiencing a budget crisis, and increases in pharmaceutical prices impact the state budget.[23]
        - While overall medical costs for the health plan covering state employees and retirees rose by 2.9 percent in 2015, pharmaceutical costs rose by 20 percent.[24]
        - CT Medicaid pays for approximately 10 million prescriptions annually.[25]

[1]*Medicine Use And Spending Shifts. A Review Of The Use Of Medicines In The US In 2014*. 1st ed. New Jersey: IMS Institute for Healthcare Informatics, 2015. Print.

[2]*Medicine Use And Spending in the US – A Review of 2015 and Outlook to 2020*.. 1st ed. New Jersey: IMS Institute for Healthcare Informatics, 2016. Print.

[3]Martin, Anne B, Hartman, Micha, Washington, Benjamin, Catlin, Aaron and the National Health Expenditure Accounts Team. National Health Spending: Faster Growth in 2015 as Coverage Expands And Utilization Increases. Health Affairs. 2015. doi: 10.1377/hlthaff.2016.1330

[4]Organization of Economic Cooperation and Development. (2017). Health spending (indicator).doi: 10.1787/8643de7e-en (Accessed on 14 February 2017) Available from https://data.oecd.org/healthres/pharmaceutical-spending.htm.

[5] Brennan, Hannah and Kapczynski, Amy and Monahan, Christine H. and Rizvi, Zain, A Prescription for Excessive Drug Pricing: Leveraging Government Patent Use for Health (August 1, 2016). 18 Yale J. L. & Tech. 275 (2016); Yale Law School, Public Law Research Paper No. 577; Yale Law & Economics Research Paper No. 560. Available at SSRN: https://ssrn.com/abstract=2832948

[6]Cox C, Kamal R, Jankiewicz A, et al. Recent trends in prescription drug costs. *JAMA* 2016;315(13):1326-26. doi: 10.1001/jama.2016.2646

[7]American Association of Retired Persons. (2016). *Rx Price Watch Report: Trends in Retail Prices of Brand Name Prescription Drugs Widely Used by Older Americans, 2006 to 2015.*

[8]Express Scripts. (2015). *The 2014 Drug Trend Report*. Accessed from http://lab.express-scripts.com/~/media/PDFs/Drug%20Trend%20Report/ExpressScripts_DrugTrendReport.ashx

[8]Generic Pharmaceutical Association. (2015). *Generic Drug Savings in the U.S.* Accessed from http://www.gphaonline.org/media/wysiwyg/PDF/GPhA_Savings_Report_2015.pdf .

[9]United States Government Accountability Office. (2016). Report to Congressional Requesters. *Generic Drugs Under Medicare: Part D Generic Drug Prices Declined Overall, but Some Had Extraordinary Price Increases.*

[10]Sanders B. Ranking Member Cummings and Chairman Sanders Investigate Staggering Price Increases for Generic Drugs. 2014

[11]Pollack, Andrew. "Mylan Raised Epipen'S Price Before The Expected Arrival Of A Generic". *Nytimes.com*. N.p., 2017. Web. 26 Feb. 2017.

[12]United States Senate Special Committee on Aging. (2016). *Sudden Price Spikes in Off-Patent Prescription Drugs: The Monopoly Business Model that Harms Patients, Taxpayers, and the U.S. Health Care System.* Accessed from http://www.aging.senate.gov/imo/media/doc/Drug%20Pricing%20Report.pdf .

[13]Thomas, Katie. "Furor Over Drug Prices Puts Patient Advocacy Groups In Bind". *Nytimes.com*. N.p., 2017. Web. 26 Feb. 2017.

[14]Chen, L. "The Most Profitable Industries In 2016." *Forbes*. December 21, 2015. http://www.forbes.com/sites/liyanchen/2015/12/21/the-most-profitable-industries-in-2016/#4bdac5e07a8b.

[15]Cegedim Strategic Data, 2012 U.S. Pharmaceutical Company Promotion Spending (2013).

[16]The Institute for Health & Socio-Economic Policy. *The R&D Smokescreen: The Prioritization of Marketing & Sales in the Pharmaceutical Industry.* October 20th, 2016. Accessed from http://nurses.3cdn.net/e74ab9a3e937fe5646_afm6bh0u9.pdf

[17]Sampat BN, Lichtenberg FR. What are the respective roles of the public and private sectors in pharmaceutical innovation? *Health Aff (Millwood)* 2011;30(2):332-9. doi: 10.1377/hlthaff.2009.0917 [published Online First: 2011/02/04] revenue-driven-pricing-strategy-behind-84-000-hepatitis-drug

[18] Light DW. (2006). Basic research funds to discover important new drugs: Who contributes how much? In M. A. Burke & A. de Francisco (Eds.), *Monitoring financial flows for health research 2005: Behind the global numbers* (pp. 28–45). Geneva: Global Forum for Health Research.

[19]United States Senate Committee on Finance. (2015). *Wyden-Grassley Sovaldi Investigation Finds Revenue-Driven Pricing Strategy Behind $84,000 Hepatitis Drug.* Accessed from https://www.finance.senate.gov/ranking-members-news/wyden-grassley-sovaldi-investigationfinds-revenue-driven-pricing-strategy-behind-84-000-hepatitis-drug

[20]"Kaiser Health Tracking Poll: June 2015". *Kff.org*. N.p., 2017. Web. 20 Feb. 2017.

[21]Mangan, Dan. "Symptoms Of Drug Prices: Painful Debt, Bankruptcy". *Healthcare*. N.p., 2017. Web. 20 Feb. 2017.

[22]"Public Ranks Drug Costs And Sufficient Provider Networks Ahead Of Affordable Care Act Changes As Health Care Priorities For Next President And Congress To Address". *Kff.org*. N.p., 2017. Web. 26 Feb. 2017.

[23]Phaneuf, K. M. (2017, February 09). Malloy budget hinges on big labor savings, new revenues. Retrieved February 15, 2017, from http://ctmirror.org/2017/02/08/malloy-unveils-40-6-billion-two-year-budget/

[24]Zorn, Jill. "The Burning Platform Of High Drug Prices". *Healthcare Hub*. N.p., 2017. Web. 26 Feb. 2017.

[25]"Connecticut Medicaid And Pharmacy". DSS CT Healthcare Cabinet Meeting 2017. Presentation.

Prepared with the assistance of Student Fellows in the Global Health Justice Partnership Practicum at Yale University.